

January 30, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L02CU019**

LAKE SAWYER CHRISTIAN CHURCH
Conditional Use Permit Appeal

Location: 100+ feet west of Lake Sawyer Road Southeast, north of
Southeast 320th Street, south of Southeast 306th Street and
east of 226th Avenue Southeast

Appellant: Lake Sawyer Christian Church, *represented by*
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King County: Department of Development and Environmental Services
Land Use Services Division, *represented by*
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:

Approve, subject to conditions

Department's Final Recommendation:

Approve, subject to conditions

Examiner's Decision:

Approve, subject to revised conditons

EXAMINER PROCEEDINGS:

Hearing Opened:

January 7, 2004

Hearing Closed:

January 7, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On November 3, 2003, the King County Department of Development and Environmental Services, Land Use Services Division, issued a conditional use permit to Lake Sawyer Christian Church approving its application to construct a new facility in the RA-5 zone west of the City of Black Diamond. The new facility would have a total floor area of 53,985 square feet, to be constructed in three phases. Phase one would be a 16,605 square foot multi-purpose building containing a sanctuary of 6,765 square feet to seat 845 individuals. During phase one approximately 5,000 square feet in portable units would also be moved onto the property as a temporary accommodation for Sunday School classrooms. At phase two, the outer shell for a 31,815 square foot office and classroom building would be built and the bottom floor finished. During phase three the upper floor interior of the office and classroom building would be completed, and a 5,565 square foot covered foyer built to provide an entry linking the two buildings. The portable classroom facilities would then be removed. Parking up to a maximum of 417 stalls would also be developed in phases.
2. The conditional use permit issued by DDES only approved 26,000 square feet of floor area for construction, or about one-half the total requested. The rationale offered for this limitation was that the application documents suggest an approximately 10 year or greater construction period for all three phases, but pursuant to KCC 21A.42.090 the conditional use permit approval would only be valid for a maximum of five years. Because the arterial roads that serve the new site are two lane facilities with residential driveways and housing development close to the road, the DDES requirement for delayed phasing was also based on a concern that the additional traffic generated by the church might prove to be “incompatible with the functional character of the neighborhood.”
3. A timely appeal of the floor area limitation imposed by the DDES conditional use permit decision was submitted by the Lake Sawyer Christian Church. The appeal statement alleges that the traffic issues identified by staff provide no regulatory basis for imposing a limitation that is grounded in either County codes or adopted policies, and that the permit timeframe stated at KCC 21A.42.090 constitute a procedural limitation and not a review standard. At the public hearing held on this appeal on January 7, 2003, staff withdrew its reliance on KCC 21A.42.090 as grounds for the conditional use decision.
4. The Lake Sawyer Christian Church application is for a larger church than is normally found in a Rural Area. As a consequence, it has been subjected to a high level of scrutiny by DDES regarding its potential impacts. The DDES approval would require the proposal’s access driveway from the northeast corner of the site to Lake Sawyer Road Southeast to provide right and left turn lanes within the arterial roadway at phase one development even though not technically warranted until phase three. The Applicant has agreed to this condition provided that

it is afforded an opportunity to construct all three phases under the current conditional use permit approval. The application has also been reviewed for its potential visual impacts on nearby residential properties. Site development is concentrated near the center of a 20 acre former tree farm and is buffered to the east by a large stand of trees within Lake Sawyer Regional Park. Visual buffering on the other three sides will be provided by retained natural areas and additional installed landscaping within the parking lots. At present, only the neighborhood south of the property is constructed, but new neighborhoods to the west and north are in the process of development. Staff review has concluded that the proposed new facilities will be adequately buffered visually from surrounding properties and that site impervious coverage limitations for the RA zone will not be exceeded. Staff review has also concluded that the building footprint of the new church will be approximately the same as that of an elementary school located just north of the site also on the west side of Lake Sawyer Road, and that the design and size of the buildings will meet conditional use permit compatibility standards.

5. The Lake Sawyer Christian Church application raises no level-of-service or safety hazard issues under KCC chapter 14.80. A traffic concurrency certificate has been issued by the County Department of Transportation for full site development through phase three. Rather, the issue seems to be more a compatibility concern initiated by comments by the City of Black Diamond. Housing construction within the city is under a moratorium until the Tacoma Public Utility Pipeline 5 is completed, at which point a new water source will be available to the city. Development applications for an estimated 1,000 or more units within the city limits are being held up pending completion of the new water supply. In addition, new residential projects north of the site in the unincorporated area are currently under review. The city fears that its street network may be hit with a rush of new development activity within the next few years, and that this large church proposal may contribute to the problem.
6. Staff clarified at the public hearing that its area of primary concern is a pocket of residential development that lies southeast of the site along the Auburn-Black Diamond Road/Roberts Drive minor arterial route, located between the Lake Sawyer Road intersection on the west and the SR 169 on the east. Staff estimated that there are roughly 20 to 30 residences along this stretch of roadway with direct arterial access, and that these homes may be adversely impacted by increased traffic noise on Sunday mornings as well as driveway access conflicts.
7. The issue is complicated by the fact that the trip generation and distribution figures for the church proposal have been in a state of flux and probably at best do not offer a high degree of reliability. Hence, the desire to take a second look at the figures after phase one has been completed and its impacts can be more accurately assessed. Trip generation figures are based on ITE national data derived from floor space ratios—an educated guess at best—and likely have no particular relevance to a large church located in a lightly populated generally rural area.

In like manner, the trip distribution pattern for the project's initial traffic impact analysis was based on general data within the County's computerized traffic model. But the project's trip distribution has been more recently refined using the church's zip code residence information to determine more specific travel patterns. When this new distribution data is plugged in, the overall trip distribution pattern shifts away from the southeast and more toward the north and west, thus reducing the project's potential impacts on the Roberts Drive connector.

8. The Sunday morning peak hour for church traffic is projected to be between 10:00 and 11:00 a.m., when attendees of the early morning service are departing the site and other individuals are simultaneously arriving for the later service. Staff's current estimate is that during this Sunday a.m. peak period the new church location may generate 120 trips along the Roberts Drive route, to which is added the 240 trips currently existing from other sources. While this will entail a high percentage increase, the total of 360 trips still remains below the current p.m. peak of over 400 trips.

CONCLUSIONS:

1. If significant traffic impacts as defined by KCC Chapter 14.80 are found not to be at issue, the only regulatory possibility that remains to support a limitation on project development is reliance on the standards contained at KCC 21A.44.040 governing approval of a conditional use permit. Most of the compatibility standards that are provided in this section, however, relate to the design, location and size of the site development proposal, not to offsite traffic impacts. Nor can a traffic compatibility issue truly be said to raise a health and safety issue under KCC 21A.44.040.B. What remains, then, as a possible basis for imposing a phasing limitation on the Lake Sawyer Christian Church application is the potential for vehicular traffic to be "hazardous or conflict with existing and anticipated traffic in the neighborhood."
2. An increase in weekend traffic that does not create a level of service issue or a threat to pedestrian or vehicular safety cannot be regarded as creating a hazard or conflict condition. It is, at most, a minor inconvenience or a slight degradation in the existing rural lifestyle along the arterial route. While there may be some noticeable increase in traffic levels along the Roberts Drive route on Sunday mornings, these increases are well within the capacity of the road and cannot seriously be regarded as creating a dangerous circumstance within the meaning of the conditional use standard.
3. Finally, the long and contentious history associated a few years back with the TimberLake Christian Church proposal south of Union Hill seems to have had a lingering effect on review of this similarly large church proposal near Black Diamond. There are, however, important differences between the instant case and the TimberLake situation. First, the Rural Area policies in operation at the time of the TimberLake application were stricter and more detailed than those currently in effect here. Second, although the TimberLake decision was ultimately upheld on appeal, the portion of the decision that relied on Comprehensive Plan policies for regulatory effect did not receive significant support in the appellate analysis. The conclusion of the Court of Appeals was that Comprehensive Plan policies have no independent regulatory effect but may be considered in the context of making discretionary review decisions under the conditional use permit standards. Finally, the discussion of Sunday traffic impacts in TimberLake was predicated on the effects to be experienced by adjacent Rural properties in front of which would pass all of the church's Sunday traffic. The underlying issue was whether such urban levels of impact would jeopardize the continued viability of the adjacent neighborhood as a Rural Area.

A different situation is presented by the facts before us here. First, the potential adverse lifestyle impacts of the Lake Sawyer Christian Church traffic are spread among a number of arterial routes. The amount assignable to the Roberts Drive route at issue is probably less than a quarter

of the total. More critically, despite the low intensity of development, properties lying within the City of Black Diamond are considered Urban for regulatory purposes. Thus a discussion of whether traffic from Lake Sawyer Christian Church may in some degree undermine their current rural experience is not germane to review under the legal standards relevant to this application.

4. The record does not support the conclusion that the Lake Sawyer Christian Church application, including its later phases, cannot meet the conditional use permit standards stated at KCC 21A.44.040. Accordingly, no legal basis exists for limiting development in the manner proposed in the November 3, 2003, DDES conditional use permit decision, and the Church's appeal must be granted.

DECISION:

The conditional use permit application of Lake Sawyer Christian Church is GRANTED, subject to the following conditions of approval.

1.
 - a. Development shall be generally in accordance with the proposal as discussed within this report, CUP application and the attached Revised Site Plan received **August 5, 2003**, except as noted in these conditions.
 - b. Minor revisions to plans are permitted to assure compliance with County Codes and conditions of this approval.
 - c. Approval of this CUP does not vest this development to any subsequently required permits, nor does it affect the requirements for vesting of subsequent permits or approvals per KCC 20.20.070. This development proposal is subject to all rules, regulations, policies and codes in effect at the time of building permit application.
2. Building/grading permit(s) for shall be issued within four (4) years of the transmittal date of this decision unless an extension for one year is granted. Otherwise, those portions of this action not implemented shall become null and void.

Building/Occupancy:

3. A total of 53,985 square feet of floor area is approved under this CUP.
4. The multipurpose/assembly area shall be limited to seating serving an audience of 750 while only the south parking area with 236 parking places is available. After construction of the north parking lot to minimally serve for overflow parking with additional 130 spaces, audience seating for 845 in the multipurpose area is allowed. This limitation shall not affect the UBC building occupancy limitations or allowances for a larger occupant load than seating capability.

Access, Circulation & Parking

5. The Applicant shall widen Lake Sawyer Road to provide the recommended southbound right turn pocket meeting appropriate King County standards (KCRS Dwg 6-007) for pocket length (minimum 100 feet) and taper, into the site access easement.
6. The Applicant shall widen Lake Sawyer Road to provide a northbound left turn lane meeting appropriate King County standards into the site access easement. The minimum length of the turn lane shall comply with KCRS Dwg 6-008, and shall include appropriate tapers to the north and south. The roadway shoulders shall be reconstructed to their current width.
7. The Applicant shall submit channelization and illumination plans to KCDOT for review and approval prior to the issuance of any building permit on the site.
8. Minimum required parking include 236 paved parking stalls (south lot) in conjunction with construction of the multipurpose building. Subsequent but prior to four years from the date of this approval (unless extended under code), additional parking for 130 vehicles shall be constructed within the North Lot. Failure to provide the North Lot parking as minimally an overflow parking lot shall limit the seating occupancy to 750 people. With completion of full site development as approved hereunder, a total of 417 parking stalls shall be authorized.
9. Parking shall be minimally placed from property lines as shown on the 8/5/2003 revised site plan.
10. Pedestrian walkways shall be incorporated into the north parking area design to comply with KCC21A.18.

Landscaping, Lighting, Signage & Bicycles

11. Existing reforested perimeters shall be supplemented with additional landscaping as needed under building plan review to assure a Type II buffer requirement having a minimum of 30 feet in width, except at the northwest corner where a minimum 20 foot wide landscape buffer shall be provided. A sufficient level of landscaping in parking areas shall screen parking and buildings. Width of landscape buffers that are shown on the August 5, 2003 site plan is approved.
12. An outdoor lighting plan shall be submitted at the time of building permit review and the plan shall demonstrate compliance with the approved plan under this CUP.
13. This CUP includes parcel # 102106-9099 for access and signage for the LSCC. Signs shall comply with KCC 21A. requirements.
14. An outdoor bicycle storage rack(s) is required unless waived after further review under building permit application.

Sensitive Areas

15. Except where buffer averaging and wetland fill is authorized, Class 3 wetlands shall receive a 25-foot buffer measured from the wetland edges (KCC 21A.24.320).
16. A 15-foot BSBL shall be established from the edge of buffer / tract (K.C.C.21A.24.200)
17. Sensitive Area buffer mitigation associated with the project shall be completed in accordance with the mitigation concept prepared by Chad Armour, LCC (February, 2003) and/or as further defined under the projects building permit.
18. Prior to commencing construction activities on the site, the applicant shall mark sensitive areas and mitigation areas in a highly visible manner, and these areas must remain so marked until all development proposal activities in the vicinity of the sensitive areas are completed (K.C.C.21A.24.150).

ORDERED this 30th day of January, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 30th day of January, 2004, to the parties and interested persons of record:

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Bill Kerschke Wetland Review DDES/LUSD MS OAK-DE-0100	Kristen Langley DDES/LUSD Land Use Traffic MS OAK-DE-0100	Karen Scharer DDES/LUSD Current Planning MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision. The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.

MINUTES OF THE JANUARY 7, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L02CU019.

Stafford was the Hearing Examiner in this matter. Participating in the hearing were Karen Scharer and Kristen Langley, representing the Department; and Robert Johns, representing the Appellant, and Lee Giermann and Eric LaBrie.

The following Exhibits were offered and entered into the record:

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|----------------|---|
| Exhibit No. 1 | Notice of Appeal, received 11/12/03 |
| Exhibit No. 2 | Statement of Appeal, dated 11/11/03 (received 11/12/03) |
| Exhibit No. 3. | Revised conditional use permit application received 2/10/03 |
| Exhibit No. 4 | Department of Development and Environmental Services Report & Decision, dated 11/03/03, with attachments A - Appeal Procedures, B - Transmittal List to Interested Parties and C - Site Plan of Request |
| Exhibit No. 5 | DDES Supplemental Report to Hearing Examiner, mailed 12/23/03 |
| Exhibit No. 6 | Revised Site Plan drawings (5), received 8/5/2003 |
| Exhibit No. 7 | Revised SEPA Environmental Checklist, received 6/25/2003 |
| Exhibit No. 8 | SEPA Determination of Non-significance, dated 11/03/03 |
| Exhibit No. 9 | Aerial – GIS Map of Black Diamond Area – Site in Yellow |
| Exhibit No. 10 | Traffic Impact Analysis (Revision), dated 01/10/03 |
| Exhibit No. 11 | Traffic Impact/Trip Distribution Analysis (revision), received 06/23/03 |
| Exhibit No. 12 | Traffic Impact Analysis – Addendum No. 1, dated 12/05/03 |
| Exhibit No. 13 | Letter from Lee Giermann, Senior Pastor, LSCC, received 1/10/03, with membership by zip code information attached |
| Exhibit No. 14 | DDES report and decision re: CuP approval for permit no. L98AC017, dated 8/18/98 |
| Exhibit No. 15 | Letter from Jason Paulsen, City of Black Diamond, dated 9/30/03 (File Ex 31) |
| Exhibit No. 16 | Map depicting recent development in the subject area, dated 3/5/03 |
| Exhibit No. 17 | Traffic Impact analysis dated June 12, 2002 |
| Exhibit No. 18 | Maps from KC website, depicting subject area before (left) and after (right) proposed development and comparison with Sawyer Woods Elementary School |
| Exhibit No. 19 | Map showing Lake Sawyer Christian Church family membership by zip code, dated 3/5/03 |